

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

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KAREN ALLEN,

Plaintiff(s),

v.

No. MSC12-00880

NRG SYSTEMS; RENEWABLE RESOURCES
WESTERN DEVELOPMENT AND STORAGE, LLC;
SHAH CORPORATION, et al.,

Defendant(s).

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1:33 p.m.

May 29, 2014

DEPOSITION OF D. COLE FRATES

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Reported by: SHERREE L. BLAKEMORE, CSR No. 7144

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(No Exhibits were marked.)

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8 RENEWABLE RESOURCES, et al.,

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10 _____/

11 BE IT REMEMBERED that on May 29, 2014, commencing at
12 the hour of 1:33 p.m. at the Law Offices of Donahue &
13 Davies, 1 Natoma Street, Folsom, California, before me,
14 SHERREE L. BLAKEMORE, a Certified Shorthand Reporter,
15 License No. 7144, there personally appeared

16
17 D. COLE FRATES

18
19 called as a witness herein; and after having been first
20 duly sworn to tell the truth, the whole truth and nothing
21 but the truth, was examined and testified as follows:

22 ---o0o---

EXAMINATION BY MR. DREYER

BY MR. DREYER: Can you state your name for the record, please?

A Cole Frates.

Q And, Mr. Frates, what is your date of birth?

A 3/28/68.

Q And you sat through the deposition of your sister?

A Yes, sir.

Q And you heard the admonitions that I went through with her?

A Yes, sir.

Q Do you need me to go through those admonitions for you?

A No, sir.

Q Now, you've also reviewed materials in preparation for today. Correct?

A Yes, sir, I have.

Q And in your review of those materials, has that assisted you in remembering things, relative to your involvement in this wind-to-energy project?

A Yes.

Q All right. You will -- during the course of this, I'm going to tell you that I want you to discern between what you remember independently reviewing documents and

1 what "I'm relying entirely upon my review of documents."

2 Okay?

3 A Okay.

4 Q The number one thing, Mr. Frates, is everybody just
5 depends upon the deponent to tell the truth, and also not
6 to guess. All right?

7 A Yes.

8 Q So I'm sure we'll have that conversation as we
9 proceed through this, but I want to just remind you of
10 that. Okay. Some of this will copy what I talked about
11 with your sister, but bear with me.

12 Aviation; any experience with aviation?

13 A I charter, I go to rural places frequently.

14 Q So you will fly in smaller airplanes as a result?

15 A Yes, sir.

16 Q Okay. And I take it then you've also flown in
17 helicopters.

18 A Yes, sir.

19 Q All right. Do you have any personal skill or
20 talent, relative to flying?

21 A No, I don't.

22 Q Have you ever actually been in a plane that someone
23 told you -- probably the answer to this is no because
24 they're generally one-seaters -- a crop-dusting type
25 plane?

1 A No, sir.

2 Q You heard the questions I was asking your sister
3 about crop dusters and what they do.

4 Is it fair to say that before '08, you knew what a
5 crop duster was?

6 A Yes, sir.

7 Q And you understood the nature of what their
8 practices of flying at low heights to spread seed or
9 chemicals on agricultural fields?

10 A Yes, sir.

11 Q All right. And in terms of height, would it be fair
12 to say, Mr. Frates, that you're mindful that these planes
13 will fly at heights of less than a hundred feet?

14 A Yes, sir.

15 Q Okay. Now, as far as electricity, before your
16 involvement in Delta Properties, had you ever had any
17 expertise or experience with electrical-type projects
18 where you're trying to find power?

19 A Yes, sir.

20 Q Okay. And what I'm looking for is pretty much to go
21 through your history of knowledge and experience in that
22 regard. So what I'll do first is ask you about your life
23 experience concerning education and work. Okay? Highest
24 level of education and where?

25 A A master's of arts at John Hopkins University.

1 Q Was there a focus on that in any kind of finance or
2 business?

3 A No, sir.

4 Q When did you graduate from John Hopkins?

5 A 1997, I think. Yeah, '98, '97.

6 Q Okay. Late '90s?

7 A Yes.

8 Q And first job out of school was what?

9 A First job out of undergraduate was -- I attended the
10 University of Tulsa previous to that and graduated in
11 1992. First job out of that, I worked for a maintenance
12 company just doing odd jobs, and then worked as a
13 gardener. And then I went back to graduate school. And
14 my first job was working for a company that used satellite
15 imagery to find new sources of water in remote locations,
16 including California and the Middle East.

17 Q And the name of that company was what?

18 A Samda, S-A-M-D-A.

19 Q And was that you were -- was it a startup company?

20 A No. It was an oil field model applied to the water
21 business. The company would go and drill and search for
22 new water supplies for farmers, avocado farmers, primarily
23 citrus farmers, in North San Diego County and along the
24 central coast of California; and then consulted with a
25 wide variety of clients in the Middle East who were

1 searching for water in difficult environments.

2 Q And how did you come to work for them?

3 A The company that I worked for, Earth Satellite, one
4 of the principals of Earth Satellite, one was my uncle.
5 And he was involved with two other gentlemen in the
6 ownership of its firm, Samda. And the man who was in
7 charge of the company had passed away recently and they
8 were searching for someone to try and replace him.

9 And so I -- I'd never been to California and I liked
10 it when I came out here and visited my sister. So that's
11 how I came to be here.

12 Q Okay. How long were you with them?

13 A About a year-and-a-half. And then the firm was sold
14 to Enron Capital & Trade, which was trying to recreate
15 what they had done in the power business in the water
16 business. And --

17 MR. DONAHUE: He just asked you how long you've been
18 there, so just --

19 THE WITNESS: Oh, sorry. Okay. Sorry.

20 MR. DONAHUE: You're anticipating the next question.

21 Q BY MR. DREYER: So when were you -- did you take the
22 position -- when did Enron purchase the company you were
23 working for?

24 A It would have been 1999, roughly.

25 Q Okay. And once they took over, the business you

1 were working for, did you continue doing the same type of
2 thing?

3 A I was -- the answer is yes.

4 Q Okay. And at some point in time, did you leave
5 Enron?

6 A I was only with Enron for a month. And then I
7 transferred to a company called Azurix, which Enron was an
8 owner of. And I actually worked for Azurix - A-Z-U-R-I-X
9 - for a year-and-a-half, and then I went out on my own.

10 Q Now, what was Azurix doing with you?

11 A They were trying to create new water supplies and
12 provide water to cities, power plants and farmers.

13 Q Now, school, including your master's, had nothing to
14 do with water. Correct?

15 A That's correct.

16 Q And this is just something that you got involved in
17 because of your practical experience.

18 A Correct.

19 Q And found you had an interest and a talent for the
20 business.

21 A Correct.

22 Q All right. At some point in time, did you meet Ari
23 Swiller?

24 A Yes.

25 Q And in what capacity or context did you meet

1 Mr. Swiller?

2 A Playing basketball, around 1999.

3 Q Down in LA?

4 A In LA.

5 Q Okay. And did the two of you then develop a
6 friendship?

7 A Yes.

8 Q All right. And what did you understand Mr. Swiller
9 to do?

10 A He worked for Ron Burkle at Yucaipa; and he did a
11 variety of political and business activities.

12 Q Okay. Had you ever been involved in the political
13 process just because of interest?

14 A Yes.

15 Q All right. And did the two of you find that you had
16 a political alignment, so to speak?

17 A Yes.

18 Q All right. And who came up with the idea of
19 combining and getting into this business of taking over
20 WDS and developing RRG?

21 A It was a -- I had been on my own for probably a year
22 or two, and we had the opportunity to work with a guy
23 named S. David Freeman. And David had run, you know, New
24 York Power Authority, Los Angeles Department of Water &
25 Power, SMUD, had a long history in, you know, running

1 every major public utility. And we had the opportunity to
2 work on a startup venture around hydrogen cars. And so it
3 was an expansion of the business that WDS was doing, and
4 Ari and David were part of that.

5 Q And did David -- did you get to know David before
6 Ari or did Ari introduce you to David?

7 A I knew David before Ari.

8 Q Okay. And the history with WDS, how did you get
9 involved with WDS?

10 A I left Azurix believing that the water business was
11 a viable business, and that if done correctly, it could be
12 incredibly interesting.

13 So I took what little money I had and started the
14 firm and tried to do some of the things that I had seen at
15 Azurix and previous, at Samda, on my own.

16 Q Okay. And time frame that you left Azurix and
17 started your own business?

18 A It would have been 2000, 2001; right around in
19 there.

20 Q And your connection with Swiller was when?

21 A We had met previous to that. And then I think we
22 were in full swing by 2003. The dates are a little fuzzy,
23 but it's right around in there.

24 Q And what happens in 2003, approximately?

25 A 2003, David left the California Power Authority, and

1 Ari was leaving Yucaipa. And we had the opportunity to
2 work on hydrogen cars with a company out of Canada who was
3 going to provide some funding. So it was really kind of
4 an economic event that brought us all together.

5 Q Okay. And how were you folks going to raise funds
6 for your projects?

7 A I think based upon opportunities. So it's
8 opportunistic.

9 We had a general theory of what the firm would be
10 doing, but none of us -- or, actually, I shouldn't say
11 that. I wasn't a banker and not my background, but I had
12 a lot of ideas. So I figured the ideas would speak for
13 themselves and we could ultimately find the money.

14 Q And was there -- of the two of you, was one of you
15 going to be the investment producer, in terms of locating
16 potential investors and making presentations? Or was it
17 something you both were going to do?

18 A I think it's more fluid than that. But the way the
19 firm breaks down is, typically, I originate the deal, and
20 then we all gather around and see what it takes to get it
21 funded, and then actually execute and run it.

22 Q Does Swiller have a finance background?

23 A The answer is, working at Yucaipa, I think he
24 learned a great deal.

25 Q All right. And do you view him as being, when you

1 first were starting, the person who had the knowledge to
2 figure out what it would cost to produce the project? Or
3 is that something you both did?

4 A I think it's a -- it's a -- it goes to -- kind of
5 part of the complexity of the firm is that it requires a
6 lot of different people with a lot of expertise to sort of
7 come up with a coherent plan.

8 Q When did you and Swiller start your business
9 together?

10 A I think it was 2003.

11 Q And the name of the business was?

12 A Renewable Resources Group.

13 Q And did you already have WDS at that time?

14 A Yes, sir.

15 Q All right. And WDS was started by you?

16 A Correct.

17 Q Okay. And you started WDS when?

18 A 2000, 2001, approximately.

19 Q Okay. Now, before 2003, had you ever done anything
20 that was wind-to-energy related?

21 A Yes, sir.

22 Q Okay. Where? What?

23 A With -- I was the founder with two other gentlemen
24 of a firm called Prometheus Wind Energy; and Prometheus
25 tried to source new wind projects.

1 Q And how did you do that?

2 A Mostly through the knowledge that I had of personal
3 relationships, of people who owned property where the wind
4 blew hard, and I thought were reasonable places to put
5 wind turbines.

6 Q And did you, at some point in time, have a project
7 that reached the point where you had met towers installed
8 to gauge wind?

9 A Yes, sir.

10 Q What was the first project you did in that regard?

11 A The Pine Tree Wind Project. It's a 120-megawatt
12 project.

13 Q Where?

14 A In the Tehachapis, right near the Onyx Ranch.

15 Q Okay. And was that while you were with WDS or had
16 you started RRG by then?

17 A It was -- it started previous to RRG, but it
18 continued while I was at RRG. But the principals, David
19 and Ari, were not involved. So I kept it separate.

20 Q Okay. David's last name again?

21 A Freeman.

22 Q Is Mr. Freeman still involved with you folks?

23 A No, sir.

24 Q When did you separate?

25 A 2000- -- he went back to run the Department of Water

1 & Power in the City of Los Angeles. And -- or no, he went
2 to run the mayor's environmental program at the City of
3 Los Angeles in 2008. Approximately, in that range.

4 Q Did he have anything to do with the Delta Wetlands
5 Properties and Projects?

6 A No, sir.

7 Q Who scored the relationship with DWP?

8 A That was me.

9 Q Okay. And what was your contact with -- I mean, who
10 did you make contact with?

11 A Initially, Rick Stephens; subsequently, Peter
12 Braffman.

13 Q And how did you get to know Stephens?

14 A I was aware of the project, the water project, and
15 the efforts that had been done to turn the island into
16 reservoirs. And I thought it was a good idea but had been
17 poorly executed. And so we thought -- or I thought that
18 we could do the project and create a huge amount of value
19 for Zurich. And so I reached out to Rick who I knew was
20 the manager and made the pitch on all the things that we
21 could do that hadn't been done before. And he thought
22 that that was compelling enough to talk to Peter.

23 Q And that was literally what you did, you -- well,
24 did you cold call him or did you know him before?

25 A Yeah. These communities are small, and so I had

1 known them, you know, off and on. But -- well, he would
2 take my phone calls and knew I had had some success on
3 some other water projects. So he was willing to listen.

4 Q Okay. Why don't you look at Exhibit 2.

5 Now, did you approach Mr. Stephens such that it led
6 to this November 1st, 2007 agreement being signed?

7 A Yes, sir.

8 Q And this agreement was obviously prepared by
9 lawyers, I'm sure, working for both sides. But give us
10 the lay description of what you were going to do as of
11 that date in '07.

12 A We were going to try and create the water project
13 that a lot of work had been done previously by Zurich and
14 Kemper. And we were to try and create as much value as we
15 possibly could around water and other opportunities and
16 other land use opportunities that we saw that might
17 include wind or carbon.

18 And -- but the focus -- the main focus, and the
19 highest and best value, which it still is, was the water
20 project, the reservoir project.

21 Q Okay. And that's to create a reservoir and store
22 water and sell it.

23 A Yes, sir.

24 Q And Mr. Braffman was whom?

25 A He was the asset manager within Zurich Alternative

1 Asset Management, in charge of this project.

2 Q And he's the one that Stephens put you in touch
3 with?

4 A Correct.

5 Q Now, I'm going to use that date as a, kind of a
6 benchmark date, November 1st, 2007. As of that date, you
7 had done the Pine Tree project.

8 A Yes.

9 Q Had you done any other wind projects?

10 A Um - no. We had looked at a number of other
11 projects, but we had not done them.

12 Q All right. And in the Pine Tree project -- Pine
13 Tree Wind Project, had you been involved in the process by
14 which they were going to assess the property as to whether
15 it was a viable wind-to-energy project?

16 A I was involved in the planning of it, but not the
17 execution. One of the other gentleman, who I was in
18 partnership with, ran the day-to-day; and he was in charge
19 of the more technical aspects. But I was involved in the
20 planning and inception, and through the sale of the
21 project.

22 Q Did you have anything to do with the development of
23 the met towers?

24 A No, sir.

25 Q And before you entered into this agreement with DWP,

1 had you ever had the task of construction of met towers?

2 A No, sir.

3 Q You had some understanding of the wind projects and
4 what it would take to assess whether there was a viable
5 location for wind?

6 A Yes, sir.

7 Q And then take them to the next stage of developing
8 the turbines, and working with the energy company -- I'm
9 over simplifying it -- but that progression?

10 A Yes. And --

11 Q Is that what you did with Pine Tree?

12 A Yes.

13 Q Okay. And I'm certain that story is much more
14 involved than what I'm putting. But I'm just getting some
15 very general -- because what I want to know, Mr. Frates,
16 is what your personal knowledge was at certain points in
17 time.

18 Now, before -- as of this time, November of '07, you
19 certainly, in your lifetime, were mindful of the flashing
20 red lights you'll see on towers, and buildings, and things
21 of that nature. You had seen that sort of thing?

22 A Yes.

23 Q All right. Like I talked about with your sister,
24 you were mindful that these flashing red lights were,
25 essentially, warning lights to communicate to aviators,

1 whether it be a small craft or helicopter, of the location
2 of the tower.

3 A Yes.

4 Q Okay. And that's just kind of common sense as
5 opposed to any specific training or education. Fair?

6 A Fair.

7 Q In terms of your background, and understanding the
8 entrepreneurial nature of what you've done, and your
9 educational background, is it fair to say, Mr. Frates,
10 that you don't have any specific background and training
11 on safety practices, in terms of looking at it from an
12 engineering standpoint, as to what's safe, that sort of
13 thing?

14 A Yes.

15 Q Okay. You had your common sense and you used that
16 accordingly. True?

17 A Yes.

18 Q You certainly wouldn't want to do anything that
19 would put -- knowingly put people at risk. True?

20 A True. Correct.

21 Q And in dealing with these projects, it seems like
22 you would -- your business would retain vendors or
23 consultants who had areas of expertise that you would
24 utilize as you built your project up.

25 A Rich Simon is a perfect example. We knew Rich from

1 Pine Tree.

2 Q Okay. And so when you developed a relationship with
3 someone you liked and you trusted, that you would go back
4 to people that you felt you could work with --

5 A Yes, sir.

6 Q -- like Mr. Simon?

7 A Yes, sir.

8 Q Okay. And you would then rely upon him when he
9 would make recommendations to you about other vendors,
10 people he was familiar with that you might want to use.

11 A Yes, sir.

12 Q But, ultimately, you realized that you had
13 responsibility for your actions, in terms of what you were
14 doing. True?

15 A Yes.

16 Q Okay. And, consequently, you would count on people
17 to give you information in their area of expertise.

18 A Yes.

19 Q Okay. Did Mr. Simon ever tell you that he had an
20 expertise in the construction of met towers?

21 A No.

22 Q Did he ever tell you that he had any expertise in
23 what aviators have to deal with?

24 A No.

25 Q Did he ever tell you any information, relative to

1 his knowledge of FAA regulations, for example?

2 A No.

3 Q Do you know if he even has any knowledge on that
4 topic?

5 A I don't know.

6 Q Now, as far as Cole Frates is concerned, you
7 obviously had heard the term "FAA." Correct?

8 A Yes.

9 Q And now, after Mr. Allen's death, you have a much
10 finer knowledge of what the FAA regulations address,
11 relative to this 200 feet limitation. True? Well, let me
12 rephrase it. Let me rephrase it.

13 Your base of information, relative to what the FAA
14 requirements are, concerning 200 feet, is better than it
15 was before Mr. Allen was killed?

16 A I still don't know what the 200-feet means; but I am
17 more acutely aware of the FAA and its role in regulating
18 aircraft.

19 Q All right. Before the incident with Mr. Allen, it
20 was something you really had never had addressed to you,
21 told there are certain regulations or requirements. True?

22 A Not to my knowledge.

23 Q All right. If someone were to tell you, "Hey, the
24 FAA requires that any structure over 200 feet have an
25 obstruction light placed on it so that aviators can see

1 it," that's certainly something that you would have
2 followed. True?

3 A Yes. Um - typically, that comes through a County,
4 and so, you know, we follow the rules. And if the County
5 is -- wherever we're going to permit something, we follow
6 what the rules are, yes.

7 Q Well, regardless of where it comes from, Mr. Frates,
8 if somebody, who you believe, whether it's a county or a
9 public party or a vendor or a constructor, tells you that
10 there is a specific requirement that structures of
11 200 feet and higher require an obstruction light, if you
12 knew that, that would be something you would take into
13 consideration in making decisions. True?

14 A Yes. Yes.

15 Q Again, it falls in that category of if you know that
16 you're putting people at risk, you would take the
17 appropriate steps to protect them.

18 A Yes.

19 Q All right. Now, as far as this project is
20 concerned, you developed a contractual relationship with
21 DWP in late '07. By this time, you and Mr. Swiller are
22 partners in RRG?

23 A Yes.

24 Q And RRG is prospecting for other projects that would
25 be relevant to its area. Fair?

1 A Fair.

2 Q So you got your eye out for concepts and thoughts
3 and looking at property, and whether you can maybe dual
4 use a storage or water project with wind.

5 A Correct.

6 Q Okay. We've heard many times about Onyx. You were
7 involved in that transaction. Right?

8 A Yes.

9 Q You found it?

10 A Yes.

11 Q And you determined that this was a particularly good
12 water storage project, simply because of the fact the
13 water rights preexisted the 1914 creation of the Water
14 Resources Board for the state of California?

15 A Yes.

16 Q All right. And when you purchased that property or
17 you were dealing with that project, you also were
18 thinking, concerning the potential that this might also be
19 a wind-power project?

20 A In that deal, the wind was the primary driver; the
21 economic opportunity. The water was the additional
22 upside.

23 Q All right. And that transaction was followed
24 shortly by a transaction with the City?

25 A Correct.

1 Q Okay. Now, at some point in time, you brought your
2 sister onboard. Correct?

3 A Yes.

4 Q And was that your idea?

5 A Probably.

6 Q Okay.

7 A Yes.

8 Q You thought she had some management skills or
9 intellectual abilities that would lend itself to managing
10 projects?

11 A Yes.

12 Q You knew she didn't have any background in wind.

13 A Correct.

14 Q Or energy?

15 A Correct.

16 Q And she was politically and concept-oriented towards
17 renewable energy like you?

18 A Yes.

19 Q So it would be fun and good, you thought, to work
20 with your sister?

21 A Yes.

22 Q And she would fit with Swiller?

23 A Yes.

24 Q All right. So 2007, you have the Delta Project.

25 When did you think about Delta water wetland project being

1 potentially a wind-to-energy project?

2 A I think, conceptually, even as early as 2007,
3 probably even before that. The opportunity was -- or at
4 least, conceptually, it was in my mind. It seemed to make
5 all sorts of sense to have a -- to combine the
6 opportunities that were there. They're very much
7 compatible with one another.

8 Q Okay. Now, did you have a contact person you were
9 going to deal with, with the Delta Wetlands Project?

10 A Yes.

11 Q Who was it?

12 A Rick Stephens.

13 Q And did you explain to Mr. Stephens your -- the
14 concept of the wind-to-energy project?

15 A Yes.

16 Q And did you explain to Mr. Stephens -- or did you
17 make any requests of him that he keep you abreast of
18 anything that is happening with the Delta Wetlands
19 Properties that you might need to be aware of, such as
20 leasing a property and things of that nature?

21 A Yes.

22 Q Okay. And did you explain to him that, "We're
23 looking at a variety of things with this project and we
24 just need to know what you're doing in terms of leasing
25 the property to anybody else, any third parties"?

1 A Yes. And -- yes.

2 Q Did you know what Bouldin Farming -- did you know of
3 that entity?

4 A Yes.

5 Q And had you ever met John Winther?

6 A Yes.

7 Q And how did you meet Mr. Winther?

8 A The first time I met him was probably around 2000,
9 2001, when he was doing what we were doing for the
10 project. Basically, the asset manager for Zurich at the
11 time, and promoting the water project.

12 And I had met him, maybe, once or twice, thereafter,
13 and had seen him several times after we were signed up by
14 Zurich, in the office, when I would go to see Rick.

15 Q And did he -- was he someone then you had his
16 contact information?

17 A Yes.

18 Q E-mail, phone number?

19 A Yes.

20 Q At some point in time, did you become aware that he
21 was affiliated with Bouldin Farming Company?

22 A One of the discussions when we were making our deal
23 with Zurich was around -- I think we wanted to do the
24 farming on the property, or at least have our farmers farm
25 it. And Winther was -- I was aware that Bouldin was a

1 farmer at that point, because he kept the farming leases.

2 Q Okay. And so did you know that Bouldin Farming was
3 farming the Webb Tract, and Bouldin Farm --

4 A Yes, I did.

5 Q -- Bouldin Island?

6 A Yes, I did.

7 Q All right. And you knew that before you started the
8 concept of developing the wind project in the Delta
9 Wetlands Properties. True?

10 A Correct.

11 Q Okay. Did you, at any point in time, you
12 personally, contact Mr. Winther about the wind-to-energy
13 project?

14 A I don't remember contacting him directly about it.
15 That would have either gone through Rick or Dave Forkel.
16 We have very little contact with John Winther. And that's
17 never been stated on purpose, but it's -- we -- it's not
18 that there's bad blood or anything like that, it's just we
19 don't communicate with one another.

20 Q Okay. And was there some kind of a personality
21 conflict or it's just the way it kind of worked out?

22 A The way it worked out. Dave has a very long
23 relationship with John; and I think -- and, as does Rick.
24 And we were the new kids on the block and had largely
25 replaced some of the functions that he was doing on the

1 development. And so I think we just -- it just naturally
2 fell out that way.

3 Q So you had the ability to make contact with
4 Mr. Forkel?

5 A And did frequently.

6 Q And you knew what his role was with Delta Wetlands?

7 A Yes, sir.

8 Q Okay. And he was an easy source of information for
9 you, meaning that he was available to you?

10 A Very much so. And mostly, Jim -- I correspond with
11 Rick, and Jim corresponds with Dave Forkel. That's the
12 way it works in practice. That said, I corresponded with
13 Dave, as well; not on the level in which Jim does. But
14 Dave has a responsibility of managing the overall islands
15 on a day-to-day basis, and so all of our activities are
16 coordinated through Dave.

17 Q Did Dave tell you that Delta Wetlands entered into a
18 lease arrangement with John Winther and Bouldin Farming in
19 April of 2009?

20 A I'm sure I was told of that, yes. Yes.

21 Q All right.

22 A I don't know if Dave did, but maybe Rick. But
23 someone told me.

24 Q Okay. So you were mindful that that happened?

25 A Yes, I was.

1 Q All right. And you know that's a farming operation?

2 A Yes.

3 Q And that would include Webb and Bouldin Island?

4 A Yes.

5 Q All right. So now, let's concentrate between
6 November of 2007, when you took on the mantle of managing
7 the property, the Delta Wetlands property, and April 1st,
8 2009, which we know is when the lease was entered into
9 between Delta Wetlands and Bouldin.

10 Did you have anything to do, in your capacity with
11 RRG, and your relationship with Delta Wetlands, to deal
12 with the tenants on the property, such as Bouldin Farming?

13 A No. We stayed away from that portion of the project
14 largely. Yeah, we were not involved.

15 Q So you had responsibility for developing, managing
16 the water storage concept. Yes?

17 A Yes.

18 Q And the development, if it was viable, of
19 wind-to-energy.

20 A Correct.

21 Q And your contact to get approved, for example, for
22 budget, for payment for towers and things like that, would
23 have been you dealing with a representative of Delta
24 Wetlands.

25 A With Rick and Peter, ultimately. But mostly, I

1 would speak to Rick, and then Rick would speak to the
2 owner.

3 Q Okay. So, for example, you -- on this, you had to
4 get approval from them for moving forward on determining
5 viability of a wind-to-energy project?

6 A Yes, sir.

7 Q And you had to develop a, kind of a budget for that.
8 Right?

9 A Yes, sir.

10 Q And was it you explaining what the budget would be
11 to Mr. Stephens?

12 A Yes, sir.

13 Q And then Mr. Stephens coming back to you, however he
14 got it accomplished, saying, "Yeah, you got the green
15 light, we'll pay for the bills"?

16 A Yes. And there would be some interaction I would
17 have with Peter at the time of our grant. And some of
18 other representatives who worked at Zurich might contact
19 me directly, but mostly, we'd go through Rick.

20 Q And that's because they want more detail on whether
21 it's viable, that sort of thing?

22 A Yeah. And we had a good working relationship so it
23 would not be uncommon for them to reach out. And -- but
24 ultimately, Rick -- I would be responsible to Rick.

25 Q Because the concept is this could be extremely

1 lucrative?

2 A Yes. Yes.

3 Q All right. And that would benefit the owners of the
4 property.

5 A Correct.

6 Q All right. And it would also benefit RRG --

7 A Yes.

8 Q -- because you had an interest in the success of the
9 property.

10 A Yes, sir.

11 Q Okay. Now, when you were talking with Stephens
12 about the budget, who were you relying on to give you
13 information about the budget, or the moneys that it would
14 take?

15 A It would be a combination of my sister, Mike and
16 Jim.

17 Q Okay. Now, let's go through those people. Your
18 sister, you knew, had really, when you brought her on
19 board, zero experience in developing wind-to-energy.

20 A Yes.

21 Q You knew Mike as a nice, bright, young man who was
22 working with End Oil?

23 A Yes.

24 Q And certainly, politically, kind of environmentally
25 fit with your group. Right?

1 A Correct.

2 Q But you also knew he knew nothing about
3 wind-to-energy as a project. Fair?

4 A Correct.

5 Q And Jim James; now, Mr. James, did you hire Jim or
6 did Swiller --

7 A Yes.

8 Q You did. Okay. How did you come to know Jim James?

9 A He had worked on permitting efforts on projects that
10 we had worked on. We had employed Jones & Stokes, which
11 are our environmental permitting experts for years, both
12 before I created WDS at Azurix. We -- so I met Jim and
13 known that he was extremely competent, so --

14 Q Ballpark, how old is Jim?

15 A 50 years old.

16 Q And where does Jim live?

17 A He used to live in Sacramento; he now lives in
18 Santa Barbara.

19 Q All right. It's a dangerous place.

20 A Yeah.

21 Q The decision to bring on James, was that your idea?

22 A Yes.

23 Q Thinking about the benefit of having an expert in
24 filling out and providing applications to public entities
25 instead of having some -- hiring someone to do it?

1 A Yeah. The belief being that you get -- you know,
2 you're one of -- the permitting process is very important
3 to us, and we get the attention we need if we hire the
4 person full-time.

5 Q Okay. And was he hired as an employee?

6 A Yes, he was.

7 Q Did he have a financial interest in the company or
8 is it strictly employment?

9 A He has a financial interest in the projects he works
10 on.

11 Q Okay. It's kind of commission based?

12 A Yes.

13 Q All right. Now -- so there is a benefit -- I mean,
14 from his standpoint, self-interest, there's certainly a
15 benefit to him to get it right and get the projects
16 through?

17 A Yes, sir.

18 Q Okay. Now, same thing with your sister; employee
19 with commission on projects she works on?

20 A Yes, sir.

21 Q Same thing with Kaschak; or is he strictly an
22 employee?

23 A I think -- I mean, now, yes. In the beginning, he's
24 into these things as you can imagine, but now he does.

25 Q Okay. Now, Jim James, did he have any experience

1 before you hired him in developing wind-to-energy
2 projects?

3 A I don't know.

4 Q Okay. You certainly didn't hire him for expertise
5 in that regard?

6 A Well, we hired him to follow the rules, regardless
7 of the project.

8 Q But my point -- or my question to you, Mr. Frates,
9 is: You didn't hire him because he brought some level of
10 expertise, that you're aware of, on wind-to-energy
11 projects, specifically?

12 A No. However, it's my belief that the permitting
13 projects, the permitting paths, are important. And our
14 level of compliance revolves -- and our success revolves
15 around us doing that, in a way that obeys the rules. And
16 Jim is an expert in obeying the rules.

17 Q Okay. Is he an expert on getting around the rules
18 or obeying the rules?

19 A I wouldn't have hired him if I thought he was an
20 expert in getting around them.

21 Q Okay. You wanted him to do it the right way.

22 A There's no incentive for us to do it the wrong way.

23 Q Okay. All right. Now, other than Cole Frates, did
24 you have anybody on this project for Delta Wetlands'
25 wind-to-energy project, who had previously been working on

1 a wind-to-energy project?

2 A Other than the knowledge they gained through the
3 Onyx Ranch acquisition, no.

4 Q All right. So when did this project -- I'm not
5 talking about germinating, I'm talking about, actually, an
6 effort was being put to it. When did it really get
7 started to get legs in that regard?

8 A It must have been, you know, shortly after we came
9 onboard, if it was around November of 2007, you know. As
10 I just mentioned, I think I had the idea before we started
11 with Zurich. So it was something that -- probably in the
12 early stages of 2008.

13 Q And who was there at the beginning, so to speak,
14 with RRG in this project?

15 A In Delta Wetlands, broadly?

16 Q Yes. You --

17 A Myself, Dave Dorrance. Jim James had come on
18 shortly right around then, as well. But it was really
19 myself and probably Dave more than anybody else.

20 Q Okay. And when your sister first started with RRG,
21 when was that?

22 A Gosh, I don't remember the dates. 2004, 2000- --

23 Q At some point in time, did you assign her to this
24 wind-to-energy project?

25 A Yes, I did.

1 Q Was it you that said, "I want you on board of this"?

2 A Probably. I don't remember specifically, but yes.

3 Q Okay. And who made the decision to put Kaschak on
4 this?

5 A Probably me.

6 (Exhibit No. 203 marked.)

7 Q BY MR. DREYER: All right. Now, I'm going to show
8 you what I've marked as Exhibit 203. And this is RRG
9 documents 1111 through 1114.

10 Can you tell me what that document is?

11 A It looks like an internal flow chart that we would
12 use to monitor the progress of the installation of the met
13 tower.

14 Q And this is for both properties, San Joaquin Bouldin
15 Island and Contra Costa Webb Tract?

16 A Yes, it is.

17 Q Who created this document?

18 A I don't know.

19 Q The first date I see on there is: January of '08,
20 site visit.

21 So it would have had to have been created by then.

22 Fair?

23 A Yes.

24 Q Okay.

25 MR. DONAHUE: Unless it's dated June of 2009.

1 Q BY MR. DREYER: Okay. What's the date there? I
2 don't have --

3 A It's June 17th was when it was created. But it's
4 probably -- it's going back and recreating a timeline. So
5 it wasn't -- it was created on June 17th.

6 Q All right. So -- and in terms of developing this
7 document in and around June of 2008, as you sit there and
8 looking at that now, see that date and see the content,
9 and knowing who would have been on the project as of June
10 of 2008, that would have been you, your sis, Jim James.
11 Right?

12 A Yeah.

13 Q Was Kaschak on by then?

14 A It was right around then. I can't remember -- I
15 don't think he was. He certainly wasn't on by
16 January 9th.

17 Q Look at the names and see if Mike is identified as
18 having any job duties there.

19 A He is, but only after - in June 16th. So previous
20 to -- from January 9th to June 16th, Mike -- oh, sorry,
21 sorry, that's not true. May 13th is the first mention of
22 Mike.

23 Q Okay. And I understand this took place, you know,
24 years ago, Mr. Frates. And just to caution you again, I
25 want to make sure you -- when you give me answers and

1 you -- in response to dates and times, that it's as best
2 as you can recall. And if you don't know, it's totally
3 okay to tell me that until we refresh your recollection.
4 Okay?

5 A Okay.

6 Q Now, looking at the document, is this the type of
7 thing you believe your sister would have created, Jim
8 James would have created or you created?

9 A It looks like something my sister would have
10 created.

11 Q And the purpose of it is just so people know what
12 their roles are.

13 A Correct.

14 Q Okay. And as far as you know, in looking at
15 Exhibit 203, the roles that were assigned, was that
16 something that you decided or was it a collaborative
17 effort between you and your sister and Ari and everybody
18 just kind of deciding who's going to do what?

19 A It's more organic. It's probably the latter.

20 Q Okay. And seeing who would be best suited to be
21 involved at these particular stages.

22 A Correct.

23 Q Understanding that it might change --

24 A Yeah.

25 Q -- depending upon circumstances.

1 Okay. Let me look at that again, please.

2 This says: Met tower permitting/installation. And this
3 would be clearly then, the decision is made, "We're going
4 to do met towers and we're going to go forward to see if
5 it's a viable entity."

6 A Yes.

7 Q Okay. I'm going to focus on the Contra Costa
8 Permitting Requirements section. And it says -- well, let
9 me ask it this way to you, Mr. Frates: Did you see this
10 property after you signed this agreement in November of
11 2007?

12 A I'm sure that I saw it in-between. I can't remember
13 the exact dates, but --

14 Q And did you see it after January of 2008? And by
15 "this property," I'm talking specifically about Webb
16 Tract.

17 A I'm sure that I saw it after January 8th.

18 Q All right. And how frequently would you go up there
19 to this property?

20 A Maybe once or twice a year. Jim was there much more
21 frequently, so he -- I had confidence that he knew what
22 was going on as it related to the activities of the water
23 project and the wind project. He lived in Sacramento at
24 the time and was really the project manager.

25 MR. DONAHUE: And he asked you how often would you

1 go out there, so --

2 THE WITNESS: Okay.

3 MR. DREYER: He's just trying to help me out.

4 MR. DONAHUE: Make him do some work.

5 MR. DREYER: He's just trying to help me out.

6 Q All right. Let's look at exhibits that are in that
7 time frame. Specifically, Exhibit 39, we'll start with
8 that one.

9 Did you view Mr. James as being your primary
10 employee assigned to this task, in terms of the day-to-day
11 efforts on behalf of the wind-to-energy project?

12 A Jim's overall responsibilities were with the Delta
13 Wetlands Project, in total. And so as part of that, the
14 wind project would have been -- would have fallen under
15 his purview, yes.

16 Q Okay. And if you had a question about status, he'd
17 be the guy that you'd probably call?

18 A Yes.

19 Q And did he have regular contact with Mr. Forkel?

20 A Yes.

21 Q Now, there was a question in some of these early
22 e-mails about Mr. Winther potentially being a problem,
23 deep six'in in the effort from the very beginning because
24 of his affinity to birds and hunting, and things of that
25 nature.

1 Were you involved at all in that conversation with
2 Jim James?

3 A That was my concern, not Jim's.

4 Q Okay. So you articulated to him and worried that he
5 would kibosh the project before you really got a chance to
6 figure it out.

7 A Yes.

8 Q Okay. Did you ever call Winther up and say, "Hey,
9 you've been out here forever. What do you think about a
10 wind-to-energy project out there?"

11 A No.

12 Q Is there a reason why you didn't do that?

13 A We didn't have that kind of relationship with
14 Mr. Winther. And Forkel was a much better person to talk
15 with about it, frankly, than Winther.

16 Q Well, Winther was one of the principals, wasn't he?
17 MR. COLEMAN: Objection. Vague. Principals of
18 what?

19 Q BY MR. DREYER: Wasn't he one of the owners of the
20 Delta Wetlands?

21 MR. DONAHUE: If you know.

22 MR. COLEMAN: At what time?

23 THE WITNESS: My understanding -- I mean, my
24 understanding is that Zurich and Kemper are the
25 principals, and that John has some settlement agreement

1 with them. And I don't know what's in that.

2 Q BY MR. DREYER: Okay. So my understanding is the
3 topic of getting his input on wind-to-energy and whether
4 he thought it was viable or not or what his instinct was
5 on that, that was just not something you elected to do.
6 True?

7 A My responsibility was to correspond with the owners,
8 not John.

9 Q Okay. But you made the decision not to ask
10 Mr. Winther.

11 A Yes.

12 Q Now, did you ask Mr. Forkel?

13 A Yes.

14 Q And what did Mr. Forkel tell you?

15 A I think he -- and I'm going by recollection here,
16 which I remember him being skeptical, which is his nature.
17 I remember him talking to some other folks about it. But
18 also saying there was a lot of wind on the property. So
19 it was kind of a mix -- it's a mixture of it will never
20 work, which is his nature, and this is kind of
21 interesting.

22 Q Okay. In terms of Mr. Simon, were you the one that
23 originally brought Mr. Simon to the project, so to speak,
24 and asking him to consult with you?

25 A Yes.

1 Q And your sister, while you were here during her
2 depo, testified that there was an occasion where she,
3 James and Mr. Simon and Mr. Boxer went to the property.
4 And Mr. Simon, you know, whatever he did, lifted his
5 finger and checked it out, or walked the property,
6 whatever he did. Were you present with the four of them
7 when that happened?

8 A No, I wasn't.

9 Q Do you remember when that took place?

10 A No, I don't.

11 Q Is that the site visit that's identified as
12 January 9th, 2008?

13 A I don't know.

14 Q Did Mr. Simon ever prepare a report for you folks
15 about his findings in terms of where he felt that the
16 tower should be located? You know, the longitudinal and
17 latitudinal --

18 A I know he -- I don't know if he made a report, but I
19 know that he had opinions on where it should go.

20 Q All right. Did he ever tell you?

21 A I didn't speak to Mr. Simon on the phone except for
22 on a very rare occasion. He's widely regarded in the wind
23 industry as being one of the foremost experts; and he was
24 immensely helpful on both the Onyx Ranch and Pine Tree.
25 And so I had all the confidence that he was an expert and

1 his opinion would carry weight with anybody.

2 Q That's why you had him involved?

3 A Yes.

4 Q Because you thought he was at the top of the game of
5 analyzing data to determine whether there would be a
6 viable project?

7 A That's correct.

8 Q That was his role. Correct?

9 A That's correct.

10 Q His role was not to build the met towers. True?

11 A No. Correct.

12 Q His role was not to tell you how to build the met
13 towers. Correct?

14 A Correct.

15 Q You are looking to the people who were doing that to
16 give that instruction.

17 A Correct.

18 Q Had you ever built a met tower under your watch
19 before this?

20 A The company, Prometheus, that I founded with two
21 other partners, had installed met towers; and I was not
22 involved in the day-to-day. But it's a very different
23 process in Kern County.

24 Q Okay. And the topography of the land where those
25 met towers were located, is it different, as well?

1 A Yes, sir.

2 Q All right. Was it an agricultural field that those
3 met towers were going into?

4 A No, sir.

5 Q All right. And did you have a contractor who built
6 the towers for you?

7 A Yes, sir.

8 Q Do you remember who it was?

9 A No, sir.

10 Q Do you remember who manufactured the towers?

11 A No, sir.

12 Q Had you ever had any dealings with NRG before
13 January of 2008?

14 A Not that I remember.

15 Q Now, did you ever meet with Francisco Avila?

16 A No, sir.

17 Q Have you, in preparation for today, reviewed any
18 depositions?

19 A Only Ari's.

20 Q So you read his?

21 A Yes, sir.

22 Q Okay. Did you watch the video or read the depo?

23 A Read the depo.

24 Q And I take it, in your review of his depo, from your
25 perspective, there's nothing he said that you said, "Whoa,

1 that is absolutely a hundred percent wrong." True?

2 A True.

3 Q Okay. Now, I'm looking at an e-mail a couple
4 before. Why don't you turn to 37.

5 And this is a reference to James indicating to Dave
6 that they got this Contra Costa guy coming out, Francisco
7 Avila.

8 Would this be the type of thing that Mr. James would
9 tell you about?

10 A Yeah. He would say to me -- I don't remember the
11 specific meeting, but he probably said, and I was aware,
12 generally, that there was a meeting with a County
13 representative on the island; which I probably thought was
14 a good thing.

15 Q And the fact that this indicates that your sister
16 was copied would tell us that she was on the project by
17 then?

18 A Yes, sir.

19 Q Now, let's go to Exhibit 38. It says, "Attached is
20 a fax from San Joaquin County," it's SJ County, "Some of
21 the items may not apply.

22 One thing that caught my eye is the required
23 lighting. "I wonder if the solar battery has sufficient
24 juice to power them."

25 Now, I don't see you on this e-mail. But my

1 question to you is: As of May of 2008, were you aware of
2 the issue of an obstruction light being necessary for this
3 San Joaquin tower?

4 A No, I don't remember it being an issue that I
5 focused on or in any way paid attention to.

6 Q And the reality is the need for obstruction lights
7 on towers, is that something that Cole Frates would
8 involve himself in?

9 A No.

10 Q That would be something you'd be relying on James,
11 who's going through the application process, to deal with.
12 Correct?

13 A We -- again, we hired Jim to make sure that we're in
14 compliance. And we hire contractors to advise us --
15 hopefully, the best contractors to advise us on the
16 appropriate measures.

17 Q All right. Now, you realize sometimes you have to
18 make -- in any project, you have to make some decisions as
19 to what path you want to take, regardless of what the
20 County requires. True?

21 A Correct.

22 Q All right. And, you know, I asked your sister this
23 question, I'll ask it of you: As of this time, you didn't
24 know about this, anything dealing with the FAA and tower
25 and 200 feet and lights. That was something that you had

1 not been ever made aware of. True?

2 A True.

3 Q If Mr. James told you that he was told by somebody
4 that, "Hey, there's a 200-foot requirement, I'm finding
5 out there's an obstruction light required on the San
6 Joaquin tower. And if you have a tower that's 200 feet or
7 taller, the FAA requires an obstruction light," just
8 assume that to be true, if he tells you that.

9 You certainly would want to comply with that if the
10 FAA required it. True?

11 MR. DONAHUE: Objection as to foundation.

12 You can answer.

13 THE WITNESS: Sorry. Could you rephrase -- is the
14 question, did he say that to me or is this a hypothetical?

15 Q BY MR. DREYER: No. It's a hypothetical. If he
16 told you that and said, "We've got to put on obstruction
17 light," in explaining this, "for something that's 200 feet
18 or higher," you wouldn't have any problem with complying
19 with the FAA requirements. True?

20 A True.

21 Q Now, if he explained to you, well -- and this is all
22 hypothetical. Because my understanding is Jim James never
23 addressed the FAA requirement, to whatever extent it
24 exists, with you, regarding obstruction lights. True?

25 A That's true.

1 Q All right. So I want you to assume hypothetically
2 that somehow James was informed: FAA requires an
3 obstruction light at 200 feet and higher. And the reason
4 for that is to give notice to an aviator that this tower
5 is there. San Joaquin is requiring us to put this two
6 obstruction lights on our tower because it's a 197-feet
7 and it's so close to 200 feet. Do you want us to put an
8 obstruction light on the other tower the Contra Costa does
9 not require?

10 MR. DONAHUE: Objection. Vague and ambiguous. And
11 it's a hypothetical without foundation.

12 And I'm not really sure what the call of the
13 question is.

14 Q BY MR. DREYER: Do you have my question in mind?

15 A That's not something he ever said to me.

16 Q Understood. If someone said to you: It would be
17 safer for aviators in this agricultural area - because we
18 have crop dusters and helicopters - to put an obstruction
19 light on the Contra Costa tower - let's say Mr. Smith said
20 that, the contractor who built the tower - would you
21 follow that recommendation?

22 MR. DONAHUE: Objection. Calls for speculation.

23 THE WITNESS: Does that mean I answer it?

24 MR. DONAHUE: You can answer.

25 THE WITNESS: Yeah. Yes. Yeah. Yeah.

1 Q BY MR. DREYER: Now, we have this Exhibit 40. Let's
2 turn to that. This is entitled Obstruction Lights. And
3 this is -- did you ever see this e-mail from Mike Kaschak?
4 We don't know who he sent it to. Did you ever see it?

5 A I don't recall seeing it.

6 Q Well, you've -- have you reviewed it in preparation
7 for today?

8 A I've seen it, yes.

9 Q Okay. This is -- and I'm paraphrasing it. He's
10 talking about the cost of obstruction lights. And we saw
11 the earlier memo from May with Mr. James where he's
12 talking about San Joaquin's requirement of an obstruction
13 light. Here, it says in this paragraph that starts with
14 "the salesman," it says, "If there's not a lot of
15 traffic," parenthesis, "And my understanding is we are
16 mainly dealing with crop dusters and maybe some
17 helicopters," end parenthesis. This is Mike making that
18 reference. Did Mike ever tell you, "Hey, we have crop
19 dusters and helicopters that are going to be out in this
20 area"?

21 A No.

22 Q Pardon me?

23 A No, not that I know. Not that I remember.

24 Q Here's my hypothetical for you, Mr. Frates. If
25 Mr. Smith or someone from PDC said to you, meaning you,

1 Mr. Frates, "Listen, this is an agricultural area. We
2 know that there's crop dusters and helicopters in this
3 area that may be utilizing this field. The County hasn't
4 required us to put a permit on this, but it is 197 feet
5 which is within a few feet of the 200-foot limitation.
6 I'm recommending you put these obstruction lights on,"
7 what would you as a representative of RRG say?

8 MR. DONAHUE: Objection. Calls for speculation.

9 MS. KNUDTSON: Vague and ambiguous, and improper
10 hypothetical.

11 MR. BRASCH: Join.

12 MR. PARDO DE ZELA: Join.

13 MS. VAN DER PUTTEN: Join.

14 Q BY MR. DREYER: Go ahead.

15 A I would put them on.

16 Q Okay. If he said to you, "I'm not making a
17 recommendation, Mr. Frates, because these things cost a
18 couple thousand dollars, it's your call. Do you want us
19 to put obstruction lights on it or not," what would you
20 say?

21 MR. DONAHUE: Objection. Calls for speculation.

22 THE WITNESS: It's almost an impossible question to
23 ask. And now, knowing the consequences, I mean, it's --
24 of course. I mean -- but -- yes.

25 Q BY MR. DREYER: Now, the -- and the reason for that

1 is you -- if you have an opportunity and it's brought to
2 your attention to make this tower safer for the area and
3 exposure to crop dusters, you'd want to take that step.

4 True?

5 A Yes.

6 Q Okay. Now, in terms of that decisionmaking process,
7 it never was put to you. True?

8 A Yes, it was not put to me.

9 Q And as far as you know, it was never put to anybody
10 with RRG. True?

11 A As far as I know.

12 Q Now, looking back at Exhibit 203. It says: "Go
13 ahead approval," talking about from Zurich, "was going to
14 be something that was going to be handled by Cole and
15 Lloys." That would make sense?

16 A Yes, sir.

17 Q "Use permit application," it says "Lloys and Jim."
18 Does that sound right?

19 A Yes.

20 Q "Building permits, Mike and Lloys."
21 Would that sound right?

22 A Yes.

23 Q "Ordering the tower, Mike and Lloys."

24 A Seems right.

25 Q Did you view Lloys as Mike's supervisor on this

1 particular project?

2 A Yeah, to an extent.

3 Q Jim, too?

4 A Yes. Yes.

5 Q All right. Now, you signed -- let's look at
6 Exhibit 5. This is just one page of the Land Use Permit
7 Application. It appears to be the front page.

8 You signed this for Delta Wetlands because you were
9 their designated agent. Correct?

10 A Correct.

11 Q And that is, in fact, your signature as the
12 applicant. True?

13 A Yes.

14 Q The handwriting, does that appear to be Mike's, or
15 can you tell?

16 A I don't know.

17 Q All right. Were you involved at all in the
18 preparation of the Land Use Permit and Application?

19 A Only in signing it; and I probably read it when I
20 signed it -- I probably read it when I signed it.

21 Q Okay. But the people that put it together, you
22 had -- that would be Lloys and Mike and Jim.

23 A Correct.

24 Q Okay. And you saw -- while you were sitting here, I
25 went through that five-page RRG document that was attached

1 to it. It's your recollection that your sister did, in
2 fact, create that document.

3 A Yes, sir.

4 Q Were you involved at all in giving her any of the
5 data or information that she put into that?

6 A Only at a macro level.

7 Q Okay. Meaning, just in a general sort of way?

8 A Directional, yeah.

9 Q Now, did anyone come to you and ask your input on
10 whether you should put visibility balls on this -- on
11 either of these towers?

12 A Not that I can recall.

13 Q Would you expect someone to come and ask you that or
14 would that be something you would expect Jim, Lloys or
15 Mike to address?

16 MR. DONAHUE: If you had an expectation.

17 MR. DREYER: Yes.

18 THE WITNESS: The only way it would have come to me
19 is in the context of the budget.

20 Q BY MR. DREYER: All right. And -- because you were
21 the budget guy?

22 A I have to communicate with the owner about where
23 money is spent, correct.

24 Q And if they came to you and said, "Hey, listen, our
25 vendor says it's" -- "because you're" -- "this is in an

1 agricultural area and we have crop dusters and helicopters
2 that will be in the area, we" -- "they're recommending
3 that we put visibility balls on, and it costs \$450 to put
4 these balls on. That's something that's not contained in
5 the budget. What do you want us to do, Cole?" What would
6 be the -- "Cole, what would be the process?"

7 Would you just make the decision there because of
8 the size or would you have to go get clearance from
9 Mr. Stephens?

10 A They would approve -- I mean, it would be such a
11 small variance in the overall amount that it wouldn't rise
12 to the -- Zurich would be fine with spending the money as
13 they were in San Joaquin County. I mean -- and so if it
14 had been recommended, it wasn't a cost issue.

15 Q So the same thing with the obstruction lights. If
16 it's a couple of thousand dollars, \$2,000, \$3,000, your
17 expectation is you wouldn't have a problem getting that
18 approved?

19 A All of us would have preferred to do things right
20 rather than skimp on the budget. That's been a general
21 theme with Zurich, and that's always been conveyed
22 throughout anything that we do.

23 Q So was there any pressure on you on the budget for
24 determining viability of the wind-to-energy project?

25 A No.

1 Q So adding \$3,000 for additional obstruction lights
2 on the Contra Costa tower, you're confident that would
3 have gone right through?

4 A Correct.

5 Q Did anyone ever talk to you about a lightning rod or
6 the spike device that was ultimately put on this tower?

7 A I was not aware of that until, literally, three days
8 ago, that there was even one on it.

9 Q All right. And you saw the photo -- have you seen
10 the photographs that Mike Kaschak took of the San Joaquin
11 tower before it was erected?

12 A Possibly. But I don't recall them.

13 Q I'm going to show you Exhibit 200, and specifically,
14 Photograph 7 in 200.

15 Have you seen that picture before?

16 A I don't recall ever seeing this picture before.

17 Q Okay. And you certainly -- if Mr. Smith and PDC
18 were constructing and erecting this tower, and it was
19 going to be in excess, with its appurtenance, to 220 feet,
20 and the FAA requires obstruction lights placed on any
21 tower of that nature, you would expect to hear about that
22 from Smith that that's required. True?

23 Let me rephrase the question. This tower, the San
24 Joaquin tower, has obstruction lights put on it. Correct?

25 A San Joaquin County, yes.

1 Q Now, the Contra Costa tower on Webb Tract did not.
2 True?

3 A Correct.

4 Q If that tower -- if Mr. Smith and the
5 representatives of CDC knew -- PDC knew that the tower was
6 going to be in excess of 200 feet and they were mindful of
7 the 200-foot FAA requirement that anything 200 feet or
8 above requires obstruction lights, would you have had an
9 expectation that Adam Smith and PDC would notify you of a
10 need for obstruction lights, regardless of whether the
11 County required it or not?

12 MR. DONAHUE: I'm just going to object that it lacks
13 foundation that that's an accurate requirement.

14 MR. BRASCH: And misstates the regulations.

15 MS. KNUDTSON: Improper hypothetical.

16 Q BY MR. DREYER: Do you have my question in mind?

17 A I expect RRG to be in compliance with whatever it is
18 we're doing. And I expect Lloys, Jim, Mike, whoever else
19 is in the firm, to make sure that we are following the
20 rules and obeying them. And in order to help do that, we
21 hire contractors who are the best of what they do, to help
22 inform us to do that.

23 So I rely on that body of knowledge to be able to
24 make the right decision. And if it's offered to me, then
25 I would make that decision.

1 Q Okay. And I appreciate the answer, but let me
2 rephrase the question for you, Mr. Frates.

3 I want you to assume for me the FAA requires that
4 any structure over -- 200 feet or over, has obstruction
5 lights on it. Just assume that to be true.

6 I want you to assume for me that you get the permit
7 to install the Contra Costa tower. And for whatever
8 reason, the application -- the permit doesn't require
9 obstruction lights on it. Okay? Are you with me so far?

10 A I am.

11 Q I want you to assume for me further, that Mr. Smith,
12 who's constructing it, and who is now putting the
13 appurtenance of a lightning rod to the top of this tower,
14 knows that the tower is more than 200 feet from base to
15 the top of the lightning spike; he knows that. And he
16 then, as a result, tells representatives at PDC that he
17 knows that. And those representatives communicate to RRG,
18 "Hey, we're over 200 feet. And even though the County
19 doesn't require us to put on obstruction lights, the FAA
20 does require them." Assuming that all to be true.

21 Would you want to put obstruction lights on the
22 tower?

23 MR. DONAHUE: Object. It lacks foundation that
24 those are facts to the case.

25 THE WITNESS: If the FAA required the lights to be

1 on, we would have put the lights on.

2 Q BY MR. DREYER: Regardless of what the County said?

3 A Yeah. We wouldn't have been able to put the tower
4 up. I mean, we would have never erected the tower because
5 the FAA presumably wouldn't have allowed us to put it up.
6 So, I mean, I think it would go without saying.

7 Q Okay. Now, have you ever been to the specific
8 location that the Webb Tract tower was erected?

9 A I have.

10 Q And why don't you look at page 32 of the exhibits --
11 or Exhibit 32.

12 MR. DONAHUE: I don't have 32.

13 MR. DREYER: Let's look at 33 then.

14 Q Now, when were you -- and I'll represent to you this
15 is a photograph that was taken of the location and the
16 tower before it was removed on Webb Tract.

17 A Do you know the date of when this was taken?

18 Q Within a month or so, I would say.

19 A Before it was removed?

20 Q Yes -- well, I don't know in terms of before it was
21 removed, but after the event --

22 A Okay. Okay.

23 Q -- that cost Mr. Allen his life.

24 Do you -- can you, rather, tell us when you were at
25 that location?

1 A I would have been there shortly after we put the met
2 tower in. We actually fallowed Webb Island for -- I don't
3 think there was farming the year after we put the met
4 tower in, if I'm getting my dates right. We sold water
5 from Webb Island to the Metropolitan Water District. And
6 so it would have been during that period of time that I
7 went out to the island.

8 Q So in --

9 A 2009.

10 Q If the tower is installed in April of 2009, you
11 would have been there in 2009?

12 A Yes.

13 Q All right. And the purpose of you going to Webb
14 Tract was what?

15 A We had to enter into a weed abatement program in
16 order to satisfy the fallowing requirements. So it was to
17 strategize on what kind of monitoring equipment we would
18 need for the Department of Water Resources around that
19 issue. So it was sometime in -- or it would have been
20 May-ish of 2009.

21 Q Do you remember seeing the met tower?

22 A Vaguely. But it wasn't -- it wasn't a point of
23 interest at the time. I was focused on something else.

24 Q All right. Did you -- do you have a recollection in
25 your mind of how the land adjacent to the tower, and by

1 "adjacent," I mean within a tenth of a mile of the tower,
2 looked?

3 A I don't. I don't.

4 Q Okay. The picture that you see on Exhibit 33, does
5 that look familiar as being the area in and about the
6 tower?

7 A Yes. It's -- I mean, it's static out there. So,
8 you know, it depends on when you go and see. And
9 sometimes there's weeds and sometimes it's been disked.
10 And so yes, generally, it looks like this right here.

11 Q Do you have any farming expertise?

12 A Yes, some.

13 Q When did you start acquiring farming expertise?

14 A When I started working in California, I got to know
15 avocado and citrus growers pretty well. In '90- -- it
16 would have been after '99. And then, thereafter, I've
17 been on farms, Azurix owned a large farm, and ever since.

18 Q Have you been around fields where seeds were going
19 to be placed for wheat or corn or things of that nature?

20 A I have.

21 Q Okay. So you understand -- have a sense of how
22 those fields will look?

23 A Yes.

24 Q And have you ever had the responsibility for
25 determining when you were going to plant seeds, things of

1 that nature?

2 A No. I rely off of our -- usually, we have a tenant
3 farmer who would take on that responsibility.

4 Q In this experience since the late '90s, did you ever
5 see a crop duster applying either seed or chemical or
6 something on the fields that you were observing?

7 A Not in any that we owned. But I've seen them do it
8 to other fields.

9 Q Okay. And you'd see how low their crop dusters go?

10 A I'm aware of that.

11 Q Certainly a lot lower than a hundred feet?

12 A Very much lower.

13 Q Okay. All right. And I'm going to -- well, I'm not
14 going to guess; I'm going to ask you.

15 Knowing that that met tower was out there on Webb
16 Tract, were you aware that it did not have obstruction
17 lights put on it?

18 A I was not aware of that.

19 Q Okay. So that's something -- is that something you
20 found out, Mr. Frates, after the incident where Mr. Allen
21 was killed?

22 A Yes, I believe so.

23 Q All right.

24 A Yes, I believe so.

25 Q Now, the tower is up, April of 2009. And now,

1 you're accumulating data that Mr. Simon is getting.

2 Right?

3 A Correct.

4 Q Now, how is he getting -- he's in Utah?

5 A Colorado or Utah, I can't remember.

6 Q Okay. How is he getting the data from your towers?

7 A He's collecting it digitally and remotely.

8 Q So he has some kind of device that gets the data, by
9 way of some type of memory card, and to him?

10 A Correct.

11 Q And as I'm understanding it, quarterly reports were
12 being provided to RRG; is that correct?

13 A I don't know if they were quarterly or monthly.

14 Q Exhibit 203 doesn't say anything about
15 decisionmaking process, relative to who's going to decide
16 what. It goes to "install towers" and then there's
17 nothing else on here.

18 Do you know whether your sister or anyone ever
19 created a flow chart for whose responsibility it was to
20 monitor the Simon data?

21 A I don't think they needed one.

22 Q Okay. Who was going to monitor it, as far as you
23 were concerned?

24 A I trusted Rich to monitor it. And as my sister
25 mentioned, without a year -- the data is largely

1 meaningless without a year's worth.

2 So you can say: "I want to look at a month's worth
3 of data," and it will be irrelevant.

4 So it was one of those things where you really kind
5 of sit and wait.

6 Q So your view is that you're not going to really look
7 at this until the one year is up.

8 A Yeah. Just not --

9 Q Okay. What was the plan then?

10 A It was -- it was really to provide optionality for
11 the owner. And by "optionality," I mean, specifically, if
12 the wind was commercial, and a year's worth of data would
13 show that, then the owner could point to that, and a
14 potential sale in the future, without ever having to
15 construct the project as a potential point of value that
16 might increase the property value. It also could be
17 built -- the project could be built, separate and apart
18 from the water project. Or the project could -- the wind
19 project could have been combined with the water project.

20 And you have to sort of -- you know, in our ideal
21 world, the perfect loop is where you're powering whatever
22 power needs with the wind and the water and selling
23 surplus power.

24 Q Who was evaluating, if you folks could have a viable
25 wind farm, how were you going to get the energy from the

1 farm onto the grid?

2 A Power Engineers.

3 Q Okay. And did you get their report?

4 A We got their initial -- they do a desktop
5 transmission study to begin with, because there's no
6 reason to really do any of this, unless you think there's
7 transmission capacity. And we had them do that. And it
8 was encouraging.

9 Q Okay. And that was before the towers were up?

10 A Probably concurrent with it. But we probably had a
11 feel for what was there before they even wrote the report.

12 Q Did you get Mr. Simon's analysis of the data from
13 the met towers after the one-year anniversary?

14 A If I didn't get it specifically, I was delivered the
15 results of it by my sister or Jim or both.

16 Q Okay. And do you recall when that happened?

17 A It would have happened shortly after the one-year
18 anniversary.

19 Q Okay. And do you remember what you were told?

20 A I was told that -- that Rich thought it was very
21 interesting and commercially viable.

22 Q All right. And did that then require -- result in
23 you folks looking to evaluate the transmission ability of
24 this energy, meaning going back to Power Engineers for a
25 more definitive report?

1 A Yes, it did.

2 Q And did you see their report when they generated it?

3 A I'm sure I did.

4 (Exhibit No. 204 marked.)

5 Q BY MR. DREYER: I'm going to show you Exhibit 204.

6 And this, for the record, is 1046 --

7 A I don't know if they completed a final report.

8 Q -- to 1054.

9 A Yeah. Sorry.

10 Q Have you ever seen that exhibit?

11 A Yeah, I've seen this somewhere.

12 Q Okay. Do you remember -- now, I'm not having you
13 read it right now. But do you remember the conclusion of
14 the report without looking at it?

15 A We -- just that the -- that there was transmission
16 and that there was a possibility to get the power out.

17 Q Okay.

18 A That was my main takeaway.

19 Q Okay. And so after you got that report, if that was
20 your -- is that something you actually read or is that
21 something you heard from somebody?

22 A I don't think we finished the final report with
23 Power on the transmission. So I likely heard it -- I
24 likely heard it.

25 Q Do you know if Power ever did a final report?

1 A I can't recall. I think we were in the process of
2 doing it when the accident happened.

3 MR. DONAHUE: Is this a good time for a break?

4 MR. DREYER: Sure. We'll take a break. And why
5 don't you go ahead and have him read the report -- or the
6 conclusion of the report.

7 MR. DONAHUE: That's not much of a break.

8
9 (Break taken.)

10
11 MR. DREYER: Okay. Let's go back on the record.

12 Q Have you had a chance to look at Exhibit 204 such
13 that you're -- you can address the conclusion?

14 A Yes.

15 Q Okay. Is that consistent with your interpretation
16 of what you just told us before we took the break as to
17 the findings by Power Engineers?

18 A Yes, it is.

19 Q Okay. And let's just focus a little bit, if we can,
20 on that time frame. So have you ever read the permit that
21 the County issued, relative to what you folks could do out
22 there as it relates to the met tower?

23 A I don't remember reading the final permit itself; I
24 remember reading the application to the permit.

25 Q Okay. Did anyone forward to you a copy of the

1 actual County -- Contra Costa County's approval?

2 A Not to my knowledge.

3 Q Now, the one-year anniversary is April of 2010.

4 A Uh-huh.

5 Q The loss of Mr. Allen happens in January of 2011.

6 So about seven months later.

7 So first question is: Do you know what the County
8 indicated RRG and Delta Wetlands was supposed to do with
9 that tower after one year?

10 A I didn't know; I did not know.

11 Q Did anyone from RRG explain to you what the County
12 indicated in its approved permit on that topic?

13 A Not that I can recall.

14 Q All right. And did anyone tell you that the
15 expectation was the tower was going to be taken down after
16 a year?

17 A That was not my expectation.

18 Q Okay. Did anyone ever tell you that was the
19 County's expectation?

20 A No.

21 Q Now, the first information you got from Mr. Simon
22 after the one-year anniversary was about when, do you
23 know?

24 A I don't know the exact dates. But it would have
25 been around the year anniversary, within weeks of that, I

1 would think.

2 Q And did you read his final assessment and analysis?

3 A I probably read the conclusion or some of the
4 assumptions. But I don't remember reading the detailed
5 report.

6 Q Were you aware of whether anybody explained to
7 Mr. Simon how long your permit lasted for this met tower?

8 A I don't think so.

9 Q Did Mr. James ever tell you the permit was for one
10 year?

11 A Not that I can recall.

12 Q He was the permit expert. Right?

13 A Correct.

14 Q Okay. And at any point in time, did Mr. James
15 relate to you that this Contra Costa permit was only valid
16 for one year for the met tower on Webb Tract?

17 A Not that I can recall.

18 Q Now, some kind of report comes from Simon, and this
19 is the report that you're saying is close to the one-year
20 anniversary that he's positive about the feasibility of
21 the wind energy?

22 A Yes.

23 Q And did you communicate that information to anyone
24 associated with Delta Wetlands?

25 A Yes.

1 Q Who?

2 A It would have been Rick Stephens and Peter Braffman.

3 Q And did you do it in writing or did you do it
4 verbally?

5 A I suspect I did it both.

6 Q Okay. And have you -- in preparation for today,
7 have you seen anything in writing that you've reviewed
8 that communicates the results of Simon's analysis to
9 Stephens or Braffman?

10 A I don't remember reading a document that said that.

11 Q Okay. What did you -- what's your recollection of
12 what you communicated to them?

13 A That there was -- that the wind itself was positive;
14 that the transmission needed more studies. And that we
15 had to think carefully about how we permitted the wind
16 project with the water project, because we were going
17 through an existing permitting project on the water.

18 Q The water was the major product. Correct?

19 A Correct.

20 Q And you didn't want to do anything to compromise the
21 water project.

22 A Correct.

23 Q Is that still continuing on?

24 A Correct.

25 Q And who's in charge of the permitting of that?

1 A Jim James.

2 Q So he'd be the one most knowledgeable about the
3 status of that project.

4 A Yes.

5 Q Okay. Now, you would require money to pay Simon to
6 continue to take care of the data. Correct?

7 A Yes.

8 Q At some point in time, I know you heard it today,
9 but other than hearing it today, were you made aware that
10 there was a problem with the data-gathering device on the
11 towers?

12 A Yes.

13 Q And were you aware that Mr. Simon had strongly
14 recommended, I'm using his word, to take the towers down
15 and fix this problem?

16 A Yes.

17 Q Okay. And were you involved at all in that effort?

18 A I recall being asked about it and I recall saying
19 that we shouldn't do it.

20 Q Why?

21 A One, is there were some redundancies on it. The
22 information that was being gathered wasn't perfect and not
23 from a financeable standpoint. But some of the data was
24 still useful. But the more important reason was we needed
25 to complete the transmission study, and we needed to make

1 sure that what we were doing wouldn't harm the water
2 project. And so I wanted to delay the decision because of
3 those things.

4 Q Is there anything in writing that indicates that you
5 told people that in writing?

6 A I don't know. I haven't seen an e-mail to that
7 effect, so I guess not.

8 Q And you didn't see it in any of the materials you
9 reviewed in preparation for today.

10 A No.

11 Q Is that true?

12 A That's true.

13 Q All right. So you wanted to get the final
14 information from Power Engineers as one component of
15 making the decision to whether to take the towers down and
16 fix the data-gathering devices?

17 A Yes.

18 Q Okay. And this report you see in front of you, 204,
19 is that the final report or is that a preliminary report?

20 A I think it's a preliminary report.

21 Q Okay. And had you directed -- had someone directed
22 Power Engineers to do a final report?

23 A My recollection is that my sister had.

24 Q Okay. And have you ever seen the final report?

25 A I think we stopped it when the accident happened.

1 Q Okay. So in January of 2010, some seven months
2 after the one-year anniversary, you stopped the effort by
3 Power Engineers?

4 MR. DONAHUE: January of 2011?

5 MR. DREYER: Yeah.

6 MR. DONAHUE: You said '10.

7 MR. DREYER: Did I say '10? I'm sorry. I meant
8 January of 2011.

9 THE WITNESS: I don't recall the exact sequence of
10 events.

11 Q BY MR. DREYER: Did you stop it because of the
12 incident where Mr. Allen was killed?

13 A I -- we stopped all of our wind-related activity
14 because of the accident.

15 Q And was that a decision that RRG made or is that a
16 decision that Delta Wetlands made?

17 A I think it was a decision we both made.

18 Q Who made the decision to stop any further efforts on
19 analyzing the wind energy?

20 A That would have been probably me. I think that
21 would have been a decision that I would have made.

22 Q And the reason why you made that decision was what?

23 A Again, the complexity of the water permitting effort
24 and the level of effort that that permitting effort took
25 or is currently taking; to compound that with a concurrent

1 EIR process on a wind project, had the possibility that it
2 could both confuse, create, and disrupt the water project.
3 So I was trying to gauge how to do those things, either
4 concurrently or sequentially. And that was very much a
5 moving piece in connection. And then concurrent with
6 that, there is the transmission issue, and all of those
7 things were going into my thinking.

8 Q How about the incident that cost Mr. Allen his life,
9 did that also go into your thinking?

10 A Only after it happened, of course. I mean, I
11 wouldn't -- well, were we talking about the period before
12 the accident.

13 Q Okay. Well, my question is: You made the decision
14 to stop the wind project after Mr. Allen's death?

15 A Correct.

16 Q Correct?

17 A Correct.

18 Q Did that play a role in your decisionmaking process?

19 A Yes.

20 Q Okay. What role did it play?

21 A The enormous tragedy had a chilling effect on both
22 the morale inside of my shop, and I'm sure -- and just the
23 whole thing around it was a terrible thing. And so I --
24 it was -- I mean, it's just something that I don't think
25 anybody wanted to do anymore.

1 Q Did you order the towers to be taken down, the met
2 towers?

3 A Yes.

4 Q And who did that, do you know?

5 A I don't know.

6 Q Do you know when they were taken down?

7 A I don't know the exact date.

8 Q Do you have an approximate date?

9 A No. I don't have an approximate date.

10 Q Okay. Now, again, going back to -- is there an
11 answer you want to change or add to?

12 A I -- the exact sequence of how the towers got taken
13 down was -- is what I'm trying to recall.

14 Q Well, I'm trying get this chronology, as well.

15 You have the report from Power Engineers in August
16 of 2010. Right?

17 A Correct.

18 Q All right. And so you have that information.
19 Right?

20 A Correct.

21 Q You have the knowledge, after that, that you have
22 data-gathering devices that aren't functioning
23 satisfactorily for Mr. Simon. Correct?

24 A Correct.

25 Q To the point where he's telling you to take the

1 tower down and get it fixed.

2 A Correct.

3 Q All right. This is months before the incident
4 involving Mr. Allen. True?

5 A Correct.

6 Q Is anything done from the time of October, when
7 you're told by Simon that the towers need to come down so
8 that the devices can be fixed, to the time of Mr. Allen's
9 death, relative to the wind-to-energy project?

10 A Sorry, what's the question again?

11 Q Anything done on the wind-to-energy project between
12 October of 2010 and January of 2011?

13 MR. DONAHUE: Let me object as vague and ambiguous.
14 Does that include the power analysis?

15 MR. DREYER: It includes anything.

16 THE WITNESS: Yeah. I mean, we're constantly
17 thinking about these things, and they were highly complex.
18 And yeah, we were thinking about them.

19 Q BY MR. DREYER: Okay. I understand you're thinking
20 about it. I can't find any communications really that
21 you're thinking about it, in terms of a document, and what
22 you're thinking, Mr. Frates.

23 So my question to you is: Was there a charge to
24 Power Engineers to do an additional report after this
25 August report?

1 A I don't know.

2 Q Okay.

3 A I need to go back and look.

4 Q Okay. You told us that you believe that at the time
5 of Mr. Allen's death, that Power Engineering was still
6 working on their analysis. Is that your recollection?

7 A That's my recollection; but that I need to check on
8 that.

9 Q Okay. You haven't heard anything from them since
10 August. Is that true?

11 A I don't remember the exact sequence of it.

12 Q Whose job was it to follow Power Engineering to
13 determine what the status was?

14 A It was my sister's.

15 Q Did you see any e-mails or anything that related in
16 preparation for this deposition to indicate that she was
17 monitoring Power Engineers in that five-month time frame?

18 A No, I didn't see any e-mails.

19 Q Okay. And you certainly didn't pick up the phone to
20 call Power Engineering to determine what was going on.
21 True?

22 A True.

23 Q Okay. So we have Simon's -- did he give you any
24 analysis of whatever data -- redundant data he was getting
25 from these met towers after his report that shortly

1 followed the one-year anniversary? Did you get another
2 quarterly report or monthly report or any kind of report?

3 A I would think we did, but I didn't see them.

4 Q Okay. Who was supposed to get Mr. Simon's data?

5 A My sister would have gotten it.

6 Q Did you see anything in your review in preparation
7 for today that indicated that she had gotten any kind of
8 data and was assessing it?

9 A No.

10 Q Well, we know that the key months are the summer
11 months. Right?

12 A Correct, summer months.

13 Q So May, June, July, August of 2010, would be after
14 the one-year anniversary. Correct?

15 A Correct.

16 Q And that would be the best time to determine what
17 the wind was like during the summer of 2010. True?

18 A Correct.

19 Q Did you ever get data from Mr. Simon, in terms of
20 his analysis of what had had happened during the summer of
21 2010?

22 A I didn't see that data.

23 Q Do you know if he even did it?

24 A I presume that he did. There was some data coming
25 in. And so I -- but I don't know; I didn't see it.

1 Q Okay. Are you aware of whether any kind of report
2 was ever prepared by Mr. Simon, relative to the summer of
3 2010, so that you folks could see -- now have two summers
4 of data to determine the viability of the project?

5 A No. It wasn't much.

6 Q Because at that point in time, it was still
7 something you were thinking about doing. True?

8 A Yeah, very much so.

9 Q All right. So that's where I'm having my problem in
10 trying to figure out what other factors besides Mr. Allen
11 being killed, was being something that was causing you to
12 not want to continue to proceed with the wind project.

13 All the concerns you described earlier about the
14 complexity of the project, and putting in the applications
15 for the water storage facility, those issues all still
16 existed before Mr. Allen was ever killed. Correct?

17 A Yes, very much so.

18 Q And they existed before you ever put in the
19 applications for the towers. True?

20 A Correct.

21 Q So that wasn't a new consideration. Right?

22 A No. But the permitting process is fluid, and new
23 things come up all the time that make it even more or less
24 complex. And I'm constantly having to evaluate.

25 Q Are you aware of whether the application -- or,

1 rather, the permit approval by Contra Costa indicated you
2 could, meaning RRG, Delta water, could put in the
3 application for an extension of its permit?

4 A I assume we were in compliance.

5 Q Okay. Do you know whether anyone ever put in a
6 request on behalf of Delta Wetlands by RRG for an
7 extension of the permit?

8 A I don't know.

9 Q That would be something you would have left to
10 Mr. James and your sister?

11 A Yes.

12 Q Was there anything in the application -- rather, in
13 the Contra Costa permit, that precluded RRG and its
14 vendors from putting obstruction lights on the tower?
15 That says: You shall not put obstruction lights on the
16 tower?

17 MR. DONAHUE: Objection. The permit speaks for
18 itself. Foundation.

19 MS. KNUDTSON: Join.

20 MR. COLEMAN: Calls for a legal conclusion.

21 Q BY MR. DREYER: Go ahead.

22 A We complied with what Contra Costa wanted us to do.

23 Q That wasn't my question.

24 My question is: Did Mr. James, or anybody, relate
25 to you that the permit prohibited RRG from -- and its

1 vendors, from putting an obstruction light on the met
2 tower in Contra Costa on Webb Tract?

3 A I don't understand the question, I don't. Sorry.
4 It's a confusing question.

5 Q It's okay. Let me ask it again, see if I can do a
6 better job.

7 Did Mr. James relate to you, or your sister relate
8 to you, anything in the application -- or, rather, in the
9 permit that Contra Costa issued, that would preclude RRG
10 or its vendors from putting obstruction lights on the met
11 tower erected on Webb Tract?

12 A Permits don't usually -- not that I'm aware of.

13 Q Okay. Have you had any involvement at all in the
14 discovery, the providing of documents and materials in
15 this litigation?

16 A What does that mean?

17 Q That means, like, where you reviewed answers to
18 interrogatories or production of documents, things of that
19 nature?

20 A I've done what Charlie has told me to do.

21 Q Okay. Well, I can't ask you what Charlie has told
22 you to do.

23 But have you reviewed any pleadings for accuracy
24 where you've looked at them?

25 A The only thing I've read is Ari's deposition.

1 Q Okay. And I don't know whether I asked you this, I
2 don't think I did.

3 Did you ever have any communication with Echelon
4 and/or Adam Smith?

5 A I don't think so.

6 Q Have you ever met him?

7 A Not to my knowledge.

8 Q Ever talked to him on the phone?

9 A Not to my knowledge.

10 Q Did he ever pick up the phone and try to -- and call
11 you that you're aware of?

12 A Not to my knowledge.

13 Q Any e-mails?

14 A I could have been copied on e-mails, but not
15 directly; no direct exchange that I know of.

16 Q Your e-mail is available if someone wanted to get it
17 to communicate with you. True?

18 A People seem to get it all time.

19 Q Okay. I'm not going to send you any e-mails. I
20 can't do that, so you don't have to worry about me.

21 How about Mr. Pueliu, or anybody associated with
22 PDC, Shah & Associates; have ever had any communication
23 with anybody who indicated they represented that entity?

24 A Not that I know of.

25 Q Any e-mails from them that you -- where they

1 specifically directed it to you?

2 A Not that I know of.

3 MR. DREYER: Okay. That's all I have for you.

4 MR. COLEMAN: A couple. Very few, actually.

5

6 EXAMINATION BY MR. COLEMAN

7

8 BY MR. COLEMAN: My name is Charlie Coleman, I'm
9 representing Delta Wetlands Properties and ZKS. And I
10 just have a couple of follow-up questions based on the
11 ones that Mr. Dreyer asked you.

12 Q You indicated that you'd not had any discussions
13 about whether or not to put lights on the met towers at
14 Webb Tract. Is that right?

15 A Yes, that's correct.

16 Q I take it then it's fair to assume that you also
17 never discussed that with Rick Stephens?

18 A No, I don't remember having a conversation with him
19 about that.

20 Q Or Dave Forkel?

21 A I don't remember having a conversation with him.

22 Q Or anybody else that you know of associated with
23 either Delta Wetlands Properties or ZKS?

24 A That's correct.

25 Q And same questions for visibility balls on the

1 towers.

2 A That's correct.

3 Q Correct, you haven't discussed that?

4 A I haven't discussed it, no.

5 Q And same for paint on the towers?

6 A I don't remember having that discussion.

7 Q Did you have any specific discussions with anybody
8 at Delta Wetlands Properties or ZKS about the specifics of
9 a budget for the met towers that would include a level of
10 detail that would include things like lighting or balls on
11 the guy wires?

12 A Typically, Rick and I have a -- more of a high-level
13 line item budget discussion rather than the details. And
14 so we didn't -- I don't remember -- I mean, I remember us
15 talking about how much it would cost, but never going into
16 the details of that.

17 Q Okay. Finally, you mentioned the "fallowing
18 requirements." Can you tell us what those are?

19 A The fallowing is -- I mean, our job is to create a
20 water project as quickly as we can; and that means the
21 water project and the farming are incompatible.

22 And so to create water that we can move and send
23 elsewhere, by definition, means that you're not farming on
24 the island.

25 So the fallowing program that we did in 2009 sent

1 the water that would have gone onto the property to
2 Metropolitan Water District of Southern California.

3 So there wasn't farming that year.

4 Q Is there a period of time that the land has to be
5 fallowed before you store water on it?

6 A No. No. It's -- once the -- the fallowing program
7 that I'm referring to, is kind of an interim step. Once
8 the reservoirs are constructed, the island will largely be
9 underwater, so it won't be farmable at that point.

10 MR. COLEMAN: All right. I think that's all I have.
11 Thank you.

12 EXAMINATION BY MS. VAN DER PUTTEN
13

14 BY MS. VAN DER PUTTEN: Hi, Mr. Frates, I'm Crystal
15 Van Der Putten, and I represent NRG. And we met earlier.
16 I just have a few questions for you.

17 Q Did you have any communications with NRG, the
18 manufacturer of the met tower?

19 A I don't think so.

20 Q So no telephone calls to NRG?

21 A It's conceivable I could have been on a call that
22 was a conference call. But not any specific call that I
23 ever remember.

24 Q Okay. To your recollection, did NRG have any input
25 into the selection of the site for the tower on Webb

1 Tract?

2 A Not to my recollection.

3 Q Okay. Did NRG have any input into which tower,
4 other than it being an NRG tower, that was purchased from
5 NRG? Let me ask that again.

6 Did NRG have any involvement in selecting the tower
7 that was ultimately purchased for Webb Tract?

8 A Um - not to my knowledge.

9 Q Okay. Did they have any input into any other items
10 that were purchased along with that tower, such as
11 lighting, visibility balls, things of that nature?

12 A Not that I know of.

13 Q You mentioned a conference call. Is that because
14 you seem to recall that NRG was involved in the conference
15 call relating to this project?

16 A No. I just deal with many things in a given day,
17 and it's conceivable I walked into a room when there was a
18 call going on. I mean, something like that. But I don't
19 remember anything specifically.

20 Q Okay. And do you know if -- I know you heard your
21 sister testify earlier that she thought she had contacted
22 NRG maybe about the pricing about the met tower.

23 Do you recall that?

24 A I don't.

25 Q Okay. I'll represent to you that she did.

1 Do you have any knowledge of anybody else from your
2 company, RRG, contacting NRG?

3 A I don't.

4 Q Okay. In relation to this project, let me be more
5 specific.

6 A I don't.

7 MS. VAN DER PUTTEN: That's it.

8
9 EXAMINATION BY MR. BRASCH

10
11 BY MR. BRASCH: My name is Charles Brasch, I
12 represent Adam Smith and Echelon Environmental Energy.

13 Q You just testified that you never directly
14 communicated with Adam Smith; is that correct?

15 A That's correct.

16 Q When was the first time you heard the name Adam
17 Smith?

18 A With this project, it's conceivable I heard it back
19 in 2008. But I don't recall it. So in refreshing, going
20 through this process.

21 Q Okay. So no specific recollection of a time?

22 A No.

23 Q But you came across it again while you were
24 reviewing the materials in preparation?

25 A Correct.

1 Q Do you know, did RRG contract with Echelon
2 Environmental Energy?

3 A I'm not sure who -- how the contract was done, if it
4 was RRG or if it was Delta Wetlands Properties or if it
5 was ZKS. It could have been any combination of those.

6 Q Okay. So you did not see any contract with Echelon
7 Environmental Energy?

8 A I don't recall seeing one. It's possible I did, but
9 I don't recall it.

10 Q Did you have an understanding at the time of what
11 Echelon Environmental Energy was hired to do?

12 A No, I don't.

13 Q Did you contract with Rich Simon, you being RRG?

14 A I'm not sure. Again, I'm not sure which entity
15 contracted with Rich, but we made the introduction, for
16 sure.

17 Q Okay. Do you have an understanding of what Rich
18 Simon was hired to do?

19 A Yes, I do.

20 Q And what was that?

21 A To analyze the wind data and advise us whether it
22 was commercially viable.

23 Q Okay. Now, my understanding is that Rich Simon has
24 an association with two different entities, one called
25 Sandbar Explorations and the other called V-BAR; is that

1 correct?

2 A Yes.

3 Q Do you know, do those two entities have different
4 functions?

5 A I don't know.

6 Q Do you know if both of those entities were involved
7 in the project?

8 A I don't know.

9 Q So we've heard testimony from your sister that
10 Mr. Simon provided consulting service and advised about
11 the height of the tower. That's not the question.

12 Does that comport with your understanding that
13 Mr. Simon advised about the height of the tower to be used
14 on this project?

15 A I wasn't involved in the details of that. And
16 that's -- if that's part of the testimony, then yes, but
17 that was not to my knowledge.

18 Q Well, let me ask it this way: Is it possible that
19 Rich Simon had duties on this project, in addition to
20 analyzing the data, that you were simply not aware of what
21 those might have been?

22 MR. DONAHUE: Calls for speculation.

23 MR. DREYER: Calls for speculation.

24 THE WITNESS: I don't think so, but -- I don't think
25 so. Yeah, I don't think so. Rich is very specific in

1 what he does.

2 Q BY MR. BRASCH: Okay. So if Mr. Simon made
3 recommendations about the height of the tower to be used,
4 to your mind, is that a part of his duties in analyzing
5 the data?

6 MR. DREYER: Same objection. Calls for speculation.

7 THE WITNESS: My view of his duties is that he
8 installs the sensors, not the towers; and that he reads
9 the data from the sensors, rather than installing the
10 towers.

11 Q BY MR. BRASCH: Okay. Do you mean he physically
12 installs the sensors on the towers?

13 MR. DONAHUE: I'm going to object that it lacks
14 foundation. He's already testified he doesn't -- he
15 didn't know what he did on this project other than data
16 analysis.

17 THE WITNESS: I don't know what the conversations
18 were with Rich Simon related to this project, other than
19 to analyze the data.

20 Q BY MR. BRASCH: Okay. What did you understand that
21 to mean?

22 A That he would gather information from the sensors
23 that were installed on the tower and interpret that.

24 Q Okay. That you all know of on the project, did RRG
25 ever retain a safety consultant?

1 A Not to my knowledge. I mean --

2 MR. DONAHUE: It's vague and ambiguous. Aside from
3 the contractors they hired?

4 MR. BRASCH: Did you hire anybody that was rated as
5 a safety engineer?

6 MR. DONAHUE: If you know.

7 THE WITNESS: That's, again, why we hire
8 contractors. It's to -- not to my knowledge.

9 MR. BRASCH: Okay. That's it. Thank you.

10

11 EXAMINATION BY MS. KNUDTSON

12

13 BY MS. KNUDTSON: I represent PDC; I introduced
14 myself earlier.

15 Q Rich Simon, your sister testified, was the one who
16 selected the sites where the towers would go. Right?

17 MR. DREYER: Object to the extent that it calls from
18 speculation.

19 THE WITNESS: I don't know.

20 Q BY MS. KNUDTSON: Okay. Well --

21 MR. DONAHUE: Don't guess.

22 Q BY MS. KNUDTSON: -- isn't it true that Rich Simon
23 gave your company coordinates that were essentially
24 general areas where the tower would be located on Webb
25 Tract and Bouldin Island?

1 MR. DONAHUE: Objection. Lacks foundation that he
2 knows. Calls for speculation.

3 Q BY MS. KNUDTSON: Of course, only if you know.

4 A I did not know that until hearing my sister say that
5 today.

6 MS. KNUDTSON: Okay. That's all I have.

7 MR. DREYER: I have a couple of questions.
8 Followup.

9
10 EXAMINATION BY MR. DREYER

11
12 Q MR. DREYER: First of all, in terms of Mr. Forkel,
13 this, again, is someone that you had regular contact with.
14 True?

15 A Almost daily.

16 Q Okay. Did you -- and as far as you know, Mr. Forkel
17 was mindful that the met towers were being installed.
18 True?

19 A Yes.

20 Q Did you discuss with Mr. Forkel what, if anything,
21 he was going to do in terms of communicating the
22 installation of these towers with the lease holder that
23 was farming these properties?

24 A My assumption was that he sits next to John in the
25 office and they had a very long relationship; and they

1 talk about what's going on on the island all the time.
2 And so by communicating with Dave, we are communicating,
3 in fact, with, you know, the person who's the most
4 knowledgeable on the day-to-day activities of the islands,
5 including the levies and the farming.

6 Q So from your perspective, there's no question that
7 Forkel knew that the towers were installed, and when they
8 were installed. True?

9 A Very much so.

10 Q And Mr. Forkel is in the agricultural industry, he
11 knows what's going on out there. Correct?

12 A Correct.

13 Q And you would certainly -- Mr. Forkel testified in
14 his deposition he knows what crop dusters are and how low
15 they get, that wouldn't surprise you. Right?

16 A That would not surprise me.

17 Q It would surprise you, would it not, if Mr. Forkel
18 didn't communicate to Mr. Winther, "Hey, by the way, you
19 got a couple of met towers on the property now that you're
20 farming." Right?

21 A That would be surprising.

22 Q And in terms of what Mr. Forkel did in terms of this
23 information about the met tower, whether he kept it to
24 himself or discussed it with Mr. Winther, you just don't
25 know. True?

1 A Correct.

2 Q Now, as far as what Bouldin Farming did with that
3 information and what -- as far as -- assuming that he
4 communicated this message or they looked and saw the
5 towers while they were out there farming, did you think it
6 was incumbent upon RRG to tell Bouldin Farming what to do
7 relative to the towers concerning their farming
8 operations?

9 A The farming operation, we were not -- we stayed away
10 from, at that point in time; and so we would have no role
11 in that farming operation.

12 Q So if they were -- if the farming operation at
13 Bouldin Farms was going to send a crop duster into the
14 areas where these towers had been erected, your
15 expectation was that the farming operation would do what
16 they felt was prudent in that regard?

17 A Not only would we not know, that would be a decision
18 that Bouldin Farming would make, independent of any of our
19 knowledge. But it would be incumbent upon Bouldin, as it
20 is on with all farmers, to talk with the crop duster.

21 Q Okay. Now -- and that would be your expectation?

22 A Yes.

23 Q Now, I want you to look at Exhibit 15. This is an
24 appraisal that was performed of the property, the Delta
25 Wetlands Project. And specifically, I want you to look at

1 page --

2 MR. DONAHUE: What's the number on that?

3 MR. DREYER: 15.

4 MR. DONAHUE: No.

5 MR. DREYER: No? 13.

6 MS. KNUDTSON: 27.

7 MR. DREYER: Okay. Let's turn to Exhibit 27. Okay.

8 Thank you.

9 Q Now, as I'm sure Mr. Donahue just pointed out, the
10 date on this is December of 2010. So this is, you know,
11 within a short period of time of the incident itself
12 happening.

13 Did you -- were you aware that Cushman did this --
14 Cushman & Wakefield did an appraisal?

15 A I was aware that they were hired to do an appraisal,
16 yes.

17 Q And did you ever see the appraisal?

18 A I don't think I saw -- no, I don't think saw the
19 full appraisal.

20 Q This is produced by you folks at RRG, and
21 specifically, look at page 1271, where it shows the
22 appraisal. Understanding this is produced by your
23 company, Mr. Frates, were you aware of these numbers, in
24 terms of the valuation that was performed by this company?

25 A Yes, I was.

1 Q All right. And do you have any expertise in
2 evaluating things like the water rights?

3 A I would like to think I do.

4 Q Okay. So when it says the value of the water of
5 \$750 million, is that consistent with your assessment?

6 MR. COLEMAN: Objection. Lack of foundation. Calls
7 for speculation.

8 MR. DONAHUE: I'm not sure that's what it states,
9 but the document speaks for itself.

10 MR. DREYER: Well, it says, "value of water rights
11 as to project is completed," and then talks about that.

12 Q Did you -- were you asked to look at this for -- by
13 Mr. Swiller?

14 A I have looked at the valuation, and I believe that
15 the property is -- should the water project be successful,
16 it'd be enormously valuable.

17 Q In the neighborhood of \$750 million?

18 MR. COLEMAN: Same objection.

19 MR. DONAHUE: If you know. Don't speculate.

20 THE WITNESS: I mean, I'm just --

21 MR. DONAHUE: It calls for an expert opinion on his
22 part. He's not disclosed as an expert, so --

23 MR. COLEMAN: Join.

24 THE WITNESS: It's worth a lot of money. It's
25 worth -- yeah -- I don't know the exact number, but it's

1 worth -- it's worth a lot.

2 Q BY MR. DREYER: Well, your business and what you do,
3 Mr. Frates, is to get a sense of what is the value of
4 water. Correct?

5 A Correct.

6 Q You do have expertise in that; do you not?

7 A Correct.

8 Q Like you said, you'd like to think you do. You know
9 you do. Right?

10 A Yes.

11 Q You understand the value of a project like this
12 where water keeps coming in every year, you're storing it
13 and you're releasing it, it's a fairly valuable property
14 if the storage facility works. True?

15 A True.

16 Q Okay. And the number of \$750 million dollars,
17 again, just based upon your background and your training
18 and your experience, it certainly is a plausible number
19 from your perspective. True?

20 MR. COLEMAN: Same objection.

21 MR. DONAHUE: Calls for an expert opinion. I mean,
22 the document speaks for itself.

23 THE WITNESS: There's a lot of variables. So -- and
24 the biggest one being the construction and the amount and
25 the cost. The reservoirs are extremely expensive to

1 build. And so -- and the range associated with that
2 construction budget is constantly changing.

3 And so if the construction budget was on the low
4 side, then this number might be correct.

5 Q BY MR. DREYER: Okay. Now, going to Exhibit 204,
6 which is the Power Engineers's report of April 9th, 2010.

7 In this report, it talks about -- and when you
8 reviewed it, it does discuss the possible need for
9 construction of other substations. True?

10 A Yes. Correct.

11 Q And that would be an expense that RRG or its
12 partner, Delta, would have to incur if they were to
13 proceed with the water project?

14 MR. DONAHUE: Object to the characterization of
15 "partner."

16 MR. DREYER: Okay. Let me rephrase it then.

17 Q The costs associated with what this report is saying
18 would be needed in the future, that would be a cost, who
19 would pay for that?

20 A It would be part -- should a wind project go
21 forward, it would be part of the cost of the overall wind
22 project, and part of the project finance of whoever
23 purchased the project at the time of that.

24 Q Did you ever share this information with anybody at
25 Delta Wetlands? And specifically, I'm talking about Power

1 Engineering's report.

2 A I probably spoke with -- at a conceptional level
3 of -- in terms of how the value works and what the
4 responsibilities would be. But only at a high level.

5 Q Meaning, Stephens?

6 A Probably Stephens and possibly Braffman.

7 Q Did you ever talk to them about the concept that if
8 you did it, that you'd have to be building a couple of
9 substations?

10 A I'm not sure that I mentioned the substations,
11 specifically; but the inclusion of the substations
12 wouldn't adversely affect the economics to a point which
13 it would be a bad project. So my assumption is, is that
14 it was still a good project even if you had to build the
15 substations.

16 MR. DREYER: Okay. All right. That's all I got.
17 Thank you.

18
19
20 (The Deposition Ended at 3:57 p.m.)
21
22
23
24
25

WITNESS' CHANGES OR CORRECTIONS

NOTE: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign below.

Deposition of: D. COLE FRATES
Case Title: Allen v NRG, et al.,
Date of Deposition: May 29, 2014

I, _____, have the following corrections to make to my deposition.

Page	Line	Change, Add, Delete
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[illegible]

1 Pursuant to Section 2025 of the Code of Civil Procedure of
2
3 the State of California, I hereby certify that I have read
4 my deposition transcript, made those changes and
5 corrections that I deem necessary, and approve the same as
6 now true and correct.

7 Dated this _____ day of _____, 2014.

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13 D. COLE FRATES
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REPORTER'S CERTIFICATE

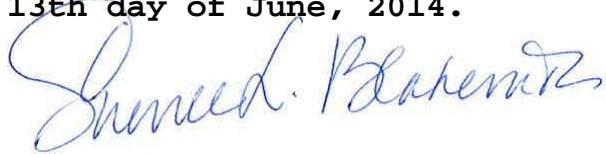
I hereby certify the witness in the foregoing
deposition,

D. COLE FRATES

was duly sworn by me to testify the truth, the whole
truth, and nothing but the truth in the within-entitled
cause; said deposition was taken at the time and place
herein named; the testimony of said witness was reported
by me, a duly Certified Shorthand Reporter and
disinterested person, and was thereafter transcribed into
typewriting.

I further certify I am not of counsel or attorney
for either or any of the parties to said deposition, nor
in any way interested in the outcome of the cause named in
said caption.

Dated and signed this 13th day of June, 2014.



SHERREE L. BLAKEMORE
Certified Shorthand Reporter
CSR NO. 7144

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June 13, 2014

D. Cole Frates
C/O DONAHUE DAVIES LLP
Attorneys at Law
P.O. Box 277010
Sacramento, CA 95827
ATTN: James Donahue, Esq.

Reference No.17462-2940


Dear Mr. Frates:

The original transcript of your deposition in the above captioned matter, taken on May 29, 2014, is now prepared and filed in our offices.

If you wish to review your deposition transcript and sign it, please contact us. You have 35 days from the receipt of this letter to review and make changes to your deposition.

If you do not wish to review your deposition, please sign in the space provided below and return this letter to us.

Very truly yours,



SHERREE L. BLAKEMORE, CSR #7144

cc: All Counsel

D. COLE FRATES

Date

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DATE:
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DREYER, BABICH, BUCCOLA,
WOOD, CAMPORA, LLP
Attorneys at Law
20 Bicentennial Circle
Sacramento, California 95826
ATTN: ROGER A. DREYER Esq.

IN RE: Allen v NRG, et al.,
DEPOSITION DATE: May 29, 2014
DEPOSITION OF: D. COLE FRATES

Dear Mr. Dreyer,

With regard to the original transcript of the
above-referenced matter, the following action has been
taken:

- () The sealed original transcript is being forwarded
to your offices.
- () The witness declined to read his/her transcript
- () The witness has read and signed the transcript
- () The witness has submitted the attached changes
- () Our office has no record of the witness viewing
the deposition
- () See attached

SINCERELY,

Royal Reporting Services, Inc.

ENCLOSURE

cc: All counsel

\$	1st 19:6 31:7	3	ability 30:3 67:23	affinity 42:24
\$2,000 57:16	2	3/28/68 6:7	abreast 27:17	agent 55:9
\$3,000 57:16 58:1	2 18:4	32 61:10,11,12	absolutely 48:1	agreement 18:6,8 19:25 41:10 43:25
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